RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE MILPITAS LANDMARK TOWERS ADDENDUM TO THE CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT SCH # 2007062074 FOR THE MILPITAS LANDMARK TOWERS PROJECT, ADOPTING THE ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE CONSTRUCTION OF A 22-STORY MIXED-USE PROJECT LOCATED AT 600 BARBER LANE (MILPITAS LANDMARK TOWERS)

WHEREAS, on August 15, 2006, TP Pham, LLC, submitted an application to the City of Milpitas (the "City") to request approval of a development at 600 Barber Lane, which project would include an 18-story, 277 foot tall mixed-use building with office, retail and residential uses, and an attached 8-level parking garage (the "TP Pham Project"); and

WHEREAS, in order to evaluate the TP Pham Project under the California Environmental Quality Act ("CEQA," codified at Public Resources Code § 21000, *et seq*., as further governed by the CEQA Guidelines, found at 14 C.C.R. § 15000, *et seq*.), an environmental impact report was prepared (the Draft EIR, as revised by the Final EIR's errata section, together with the other sections of the Final EIR, are collectively referred to herein as the "EIR," State Clearinghouse No. 2007062074); and

WHEREAS, on November 18, 2008, the City Council of the City of Milpitas certified the EIR, adopting a Statement of Overriding Considerations and a Mitigation, Monitoring and Reporting Program, and approved the TP Pham Project; and

WHEREAS, BDK Capital, LLC, as successor in interest to TP Pham, has proposed revisions to the TP Pham Project under which the project site would be redeveloped with a 22-story mixed use building that includes two 19-story residential towers over three stores of parking as well as supporting retail and office uses and one to two levels of below-ground parking (the "Landmark Towers Project" or "Revised Project"); and

WHEREAS, the Revised Project is consistent with the City's General Plan; and

WHEREAS, pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which an EIR has been certified, the lead agency is required to review any changed circumstances or new information to determine whether any of the circumstances under Public Resources Code section 21166 and State CEQA Guidelines section 15162 require additional environmental review; and

WHEREAS, staff evaluated the Revised Project in light of the standards for subsequent environmental review outlined in Public Resources Code section 21166 and State CEQA Guidelines section 15162 by preparing an Initial Study and accompanying technical reports; and

WHEREAS, based on that evaluation, staff concluded that the EIR fully analyzed and mitigated, where feasible, all potentially significant environmental impacts, if any, that would result from the Revised Project, and therefore, no subsequent EIR or mitigated negative declaration is required; and

WHEREAS, on that basis, staff prepared an Addendum pursuant to State CEQA Guidelines section 15164; and

WHEREAS, pursuant to CEQA Guideline 15164, subdivision (c), the Addendum is not required to be circulated for public review, but can be attached to the EIR; and

WHEREAS, on February 24, 2016, a duly noticed public hearing on the Addendum and the Revised Project was held by the Planning Commission (the "Commission") to consider the Addendum together with the EIR, and to accept oral and written testimony from interested persons; and

WHEREAS, at this hearing, the Commission adopted Resolution No. 16-005 recommending approval of the Milpitas Landmark Towers Addendum to the Certified Final Environmental Impact Report SCH # 2007062074 for the Milpitas Landmark Towers Project, adoption of the Environmental Findings pursuant to CEQA, adoption of the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, and approval of the Revised Project; and

WHEREAS, on April 5, 2016, the City Council held a duly-noticed public hearing to consider the Commission's recommendation and evidence regarding the Revised Project; and

WHEREAS, at this hearing, the City Council considered the Addendum and the EIR; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

SECTION 1. Record and Basis for Action. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. Compliance with CEQA. State CEQA Guidelines section 15164 requires lead agencies to prepare an addendum to a previously certified EIR if some changes or additions to the project are necessary, but none of the conditions requiring preparation of a subsequent EIR are present. The City Council has reviewed and considered the EIR and Addendum and finds that those documents taken together contain a complete and accurate reporting of all of the environmental impacts associated with the Revised Project. The City Council further finds that the Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and that the EIR and Addendum, taken together, reflect the City's independent judgment.

SECTION 3. Findings Regarding Environmental Impacts. Based on the substantial evidence set forth in the record, including but not limited to the EIR and the Addendum, the City Council finds that, based on the whole record before it, none of the conditions under State CEQA Guidelines section 15162 or 15163 requiring subsequent environmental review have occurred because the Revised Project:

a) will not result in substantial changes that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

b) will not result in substantial changes with respect to the circumstances under which the Revised Project is developed that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

c) does not present new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIR documents were certified or adopted, as applicable, showing any of the following: (i) that the modifications would have one or more significant effects not discussed in the earlier environmental documentation; (ii) that significant effects previously examined would be substantially more severe than shown in the earlier environmental documentation; (iii) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the applicant declined to adopt such measures; or (iv) that mitigation measures or alternatives considerably different from those analyzed previously would substantially reduce one or more significant effects on the environment, but which the applicant declined to adopt.

Further, based on the substantial evidence set forth in the record, including but not limited to the EIR and the Addendum, the City Council finds that the applicable mitigation measures identified in the EIR have been incorporated into a specific Mitigation Monitoring Program for the Revised Project and would ensure that any potential environmental impacts would be reduced to less than significant levels. The City Council finds that those impacts identified in the EIR as significant and unavoidable remain significant and unavoidable under the Revised Project but that the Revised Project does not increase those previously identified impacts in their severity. No new mitigation measures are required to

mitigate environmental impacts associated with the Revised Project. Therefore, the Addendum supports the City's consideration of the Revised Project, as outlined in the State CEQA Guidelines Section 15162 and 15164.

SECTION 4. Statement of Overriding Considerations. The City Council finds that the CEQA Findings and Statements of Overriding Considerations attached hereto as **Exhibit 1**, and by this reference are incorporated herein, remain valid and appropriate for purposes of the Revised Project.

SECTION 5. Mitigation Monitoring Program. The City Council re-adopts those mitigation measures identified in the EIR that are relevant to the Revised Project as detailed specifically in the Mitigation Monitoring and Reporting Program prepared for the Addendum attached hereto as **Exhibit 2**, and by this reference incorporated herein.

SECTION 6. Approval of the Addendum. The City Council approves the Addendum to the EIR.

SECTION 7. Custodian of Record. The documents and materials that constitute the record of proceedings on which this Resolution has been based are located at the Milpitas Planning Division, located at 455 East Calaveras Boulevard, Milpitas, California 95035. The custodian for these records is the Director of Planning & Neighborhood Services. This information is provided in compliance with Public Resources Code section 21081.6.

SECTION 8. Staff Direction. A Notice of Determination shall be filed with the County of Santa Clara and the State Clearinghouse within five (5) working days of the City Council's adoption of the Commission's recommendations and approval of the Revised Project.

PASSED AND ADOPTED this _____ day of _____, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

EXHIBIT 1

MITIGATION FINDINGS AND FINDINGS CONCERNING ALTERNATIVES FOR THE PROJECT LOCATED AT 600 BARBER LANE

SECTION 1: MITIGATION FINDINGS PURSUANT TO CEQA GUIDELINES SECTION 15091

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15163(e), the City Council hereby makes the following findings with respect to the potential for significant environmental impacts from the project located at 600 Barber Lane ("Project") and means for mitigating those impacts. The impacts and mitigations included in the following findings are summarized rather than set forth in full. The Draft and Final EIR documents are incorporated herein by reference and should be consulted for a complete description of the impacts and mitigations.

Less than Significant Impact with Mitigation

Impact LU-1: The proposed project conflicts with the regulations adopted for the purpose of avoiding or mitigating an environmental effect.

MM LU-1.1: Prior to issuance of an occupancy permit, the developer shall construct a helicopter pad meeting the requirements of the Milpitas Fire Department.

Finding: The proposed project, including the condition of project approval requiring the construction of a helicopter pad, would not result in land use conflicts upon the surrounding land uses and vice-versa, or any other land use impacts.

Impact TR-1: *McCarthy Boulevard/ BellewDrive* – Intersection operations degrade from LOS D- to LOS E during the PM peak.

MM TR-1.1: *McCarthy Boulevard/Bellew Drive* - Prior to issuance of a building permit, the developer shall restripe or pay a fair share contribution towards the restriping of the existing eastbound approach (i.e., one left turn, one through, and one right turn lane) to provide two left turn lanes and one shared through/right turn lane, which would provide acceptable (LOS D) operations. This improvement, in conjunction with optimizing the signal coordination along the McCarthy Boulevard corridor, would also provide acceptable midday operations at this intersection. Installation of the double eastbound left turn lanes requires median island and traffic signal modification work on Bellew Drive from Barber Lane to Technology Drive and on McCarthy Boulevard from Bellew Drive to Ranch Drive. To ensure proper operation, these improvements must also be coordinated with modifications for the intersection of Bellew Drive and Cypress Drive.

Impact TR-2: *SR 237/I-880 NB Ramps* – Traffic from the proposed project exacerbates LOS F operations during the PM peak hour.

MM TR-2.1: *SR237/I-880 NB Ramps* - Prior to issuance of a building permit, the developer shall convert the northbound center left-turn lane to a shared left- and right-turn lane, which would provide acceptable (LOS D) operations. Coordination with Caltrans will be required to implement this improvement. Coordination with Caltrans will be required to implement this improvement, which may require traffic signal and/or median island modifications.

Impact TR-6: *Bellew Drive/Barber Lane* – The addition of project traffic causes this intersection to degrade from LOS B- to LOS E during the PM peak hour.

MM TR-6.1: *Bellew Drive/Barber Lane* - The developer shall add a northbound left turn lane (which requires removal of the existing bike lanes and on-street parallel parking on a section of Barber Lane). This improvement would provide acceptable PM peak hour operations at this intersection. This improvement, in conjunction with optimizing signal operations, would also provide acceptable midday operations at this intersection.

Impact TR-7: *McCarthy Boulevard-O'Toole Avenue/Montague Expressway* – Traffic from the proposed project exacerbates LOS F operations during the PM peak hour.

MM TR-7.1: *McCarthy Boulevard-O'Toole Avenue/Montague Expressway* - The developer shall widen or pay a fair share contribution towards the widening of the northbound approach to provide a dedicated right turn lane from northbound O'Toole Avenue to eastbound Montague Expressway, which would provide LOS D operations during the AM peak hour and LOS E operations during the PM peak hour.

Impact TR-8: *E. Calaveras Boulevard/S. Milpitas Boulevard* – Traffic from the proposed project exacerbates LOS F operations during the AM peak hour.

MM TR-8.1: *E. Calaveras Boulevard/S. Milpitas Boulevard* - The developer shall add a third westbound through lane, which requires converting the separate right-turn lane to a shared through/right-turn lane and striping a third receiving lane past the intersection. This provides acceptable operations (LOS E-) during the AM peak hour and is consistent with the Valley Transportation Plan 2030.

Impact TR-10: *McCarthy Boulevard-O'Toole Avenue/Montague Expressway* – The addition of project traffic causes this intersection to degrade from LOS D to LOS E under during the AM peak hour.

MM TR-10.1: *McCarthy Boulevard-O'Toole Avenue/Montague Expressway* - The developer shall widen or pay a fair share contribution towards the widening of the northbound approach to provide a dedicated right turn lane from northbound O'Toole Avenue to eastbound Montague Expressway, which would provide LOS D operations during the AM peak hour and LOS E operations during the PM peak hour.

Finding: Traffic from the proposed project would significantly impact nine signalized intersections. The mitigation measures described above would reduce impacts at five of the nine signalized intersections to a less than significant level by improving operations to an acceptable level of service.

Impact NO-1: During project construction, businesses in the vicinity of the site would be intermittently exposed to high noise levels.

MM NO-1.1: The developer shall implement the following measures, which would reduce short-term construction noise impacts to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- Construction equipment shall be well maintained and used judiciously to be as quiet as practical.

- Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists.

- Prohibit all unnecessary idling of internal combustion engines and equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.

- Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from businesses or noise-sensitive land uses.

- Notify all adjacent land uses of the construction schedule in writing.

- Designate a disturbance coordinator, responsible for responding to complaints about construction noise. The name and telephone number of the disturbance coordinator shall be posted at the construction site and made available to businesses, residences or noise-sensitive land uses adjacent to the construction site.

- If pile driving is necessary, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.

- If pile driving is necessary, when possible the project shall work with the owners and managers of adjacent commercial uses to select days and times to conduct pile-driving activities that would minimize the impact on these uses.

Finding: Short-term noise impacts during project construction are usually the result of construction during the early morning or late evening, improperly maintained equipment, and the general lack of consideration of noise generation at construction sites. Implementation of mitigation and avoidance measures MM NO-1 would reduce construction noise impacts to a less than significant level by limiting hours of construction and holding the developer responsible for implementing feasible construction noise mitigation measures.

Impact NO-2: Commercial uses north and south of the project site would be exposed to vibration during construction of the project foundation, particularly if pile driving is used as a construction method.

MM NO-2.1: The developer shall implement the following measures, which in addition to those measures listed above for short-term construction noise impacts, would reduce short-term construction vibration impacts to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- Avoid impact pile driving where possible. Drilled piles or construction of slab mat foundation cause lower vibration levels where geological conditions permit their use.

- Identify any highly vibration sensitive uses located on the adjoining properties to the north and south of the site.

- If impact pile driving is proposed within 50 feet of adjacent structures or within 200 feet of any highly sensitive uses identified in the adjoining buildings, a construction vibration-monitoring plan would need to be implemented to document conditions prior to, during and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and in accordance with

industry accepted standard methods. The construction vibration monitoring plan would include the following tasks:

- Schedule pile driving so that piles furthest from adjacent structures are driven first, and only after vibration levels are found to be within the limits is pile driving be allowed at closer distances.

- Performance of a photo survey, elevation survey, and crack monitoring survey for each impacted structure. Surveys shall be performed prior to any construction activity, in regular interval during construction and after project completion and shall include internal and external crack monitoring in structures, settlement, distress, and shall document the condition of foundations, walls and other structural elements in the interior and exterior of the structures.

- Development of a vibration monitoring and construction contingency plan to identify structures where monitoring would be completed, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to complete photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies would be identified for when vibration levels approached the limits.
- At a minimum, vibration monitoring shall be completed during pavement demolition, excavation, and pile driving activities. Monitoring results may indicate the need for more or less intensive measurements.

- If vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures.

- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information for this person shall be clearly posted on the construction site.

- Complete a post-construction survey on structures where either monitoring has indicated high levels or complaints of damage have been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.

- The results of all vibration monitoring shall be summarized and submitted in a report shortly after substantial completion of each phase identified in the project schedule. The report shall include a description of measurement methods, equipment used, calibration certificates and any required graphics to clearly identify vibration-monitoring locations. An explanation of all events that exceeded vibration limits will be included together with proper supporting documentation.

Finding: The vibration resulting from pile driving on the project site has the potential to cause structural and/or architectural damage to the commercial structure to the north of the project site and/or architectural damage to the commercial structure to the south of the project site. Implementation of mitigation and avoidance measures MM NO-2 would reduce construction vibration impacts to a less than significant level by holding the developer responsible for completing structural and/or architectural surveys before and after pile driving to document any damage that may have occurred and monitoring vibration during pile driving.

Impact NO-3: Without the provision of forced-air mechanical ventilation systems and/or implementation of sound-rated construction methods, the interior noise levels of the proposed residential units would be above the City and State standard of 45 dBA DNL.

MM NO-3.1: The developer shall implement the following measures, which would reduce the interior noise levels of the proposed residential units to a less than significant level (i.e., 45 dBA DNL or lower). These measures shall be printed on all construction documents, contracts, and project plans:

- Building design and treatments will be incorporated in to the project to ensure compliance with State and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that interior noise levels will be reduced to 45 dBA DNL or lower. Building sound insulation requirements would include the provision of forced-air mechanical ventilation for all outer facing residential units, courtyard facing units on the 10th floor and higher, and the clubhouse proposed atop the parking garage, so that windows could be kept closed at the occupant's discretion to control noise. Special building construction techniques may be required for outer northwest, northeast, and southeast facing facades, courtyard units on the 13th floor and above, and the clubhouse atop the parking garage. These treatments could include sound rated windows and doors, sound rated wall constructions, acoustical caulking, etc. The analysis be submitted to the City of Milpitas for review and approval along with the building plans, prior to issuance of a building permit. Feasible construction techniques such as these would adequately reduce interior noise levels to 45 dBA DNL or lower.

- A qualified acoustical consultant shall review final site plans, building elevations, and floor plans prior to the issuance of a building permit to calculate expected interior and exterior noise levels and ensure compliance with City policies and State noise regulations.

Finding: Without the provision of forced-air mechanical ventilation systems and/or implementation of sound-rated construction methods, the interior noise levels of the proposed residential units would be above the City and State standard of 45 dBA DNL. Implementation of mitigation and avoidance measures MM NO-3 would reduce interior noise levels to a less than significant level by holding the developer responsible for submitting a project-specific acoustical analysis prepared by a qualified acoustical consultant that includes the provision of forced-air mechanical ventilation and all necessary sound-rated construction methods.

Impact AI-2: Construction activities on the project site could result in PM10 levels downwind of the project site that exceed State standards.

MM AI-2.1: The developer shall implement the following measures, which would reduce dust generation during demolition of existing structures to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- Watering will be used to control dust generation during demolition of structures and break-up of pavement.

- All trucks hauling demolition debris from the site will be covered.

- Dust-proof chutes to load debris into trucks will be used whenever feasible.

MM AI-2.2: The developer shall implement the following measures, which would reduce dust generation during construction to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non toxic stabilizers or dust palliatives.

- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- Pave, apply water three times daily, or apply (non toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Sweep daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff related impacts to water quality.
- Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- Hydroseed or apply non toxic soil stabilizers to inactive construction areas.
- Enclose, cover, water twice daily, or apply non toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Limit speeds on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.
- Suspend construction activities that cause visible dust plumes to extend beyond the project site.
- Install wheel washers for all existing trucks, or wash off the tires or tracks of all trucks and equipment leaving the site;
- Install wind breaks, or plant trees/ vegetative wind breaks at windward side(s) of construction areas.
- Suspend excavation and grading activities when wind gusts exceed 25 mph; and
- Limit the area subject to excavation grading, and other construction activity at any one time

Finding: The population assumptions in the Ozone Strategy are based on the General Plans of each city in the Bay Area, including the City of Milpitas. The project requires a General Plan amendment that would change the land use designation of the project site from a non-residential use to a residential use and, therefore, is inconsistent with the Ozone Strategy. Because the project is infill development that improves the jobs/housing balance in the City, includes and is located adjacent to commercial and retail services, and is served by local transit with direct connections to regional transit and, therefore is anticipated to reduce air pollution levels, this inconsistency would not result in a significant air quality impact.

Impact AI-3: Sensitive receptors could be exposed to elevated levels of diesel particulate during project construction.

MM AI-3.1: The developer shall implement the following measures, which would reduce the impact of diesel particulate matter emissions during construction to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- Prohibit use of "dirty" equipment. Opacity is an indicator of exhaust particulate emissions from off-road diesel powered equipment. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.

- The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g. compressors).

- Diesel equipment standing idle for more than two minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite and staged away from residential areas.

- Properly tune and maintain equipment for low emissions.

Finding: Dustfall and locally elevated levels of PM_{10} downwind of construction activity is usually the result of uncontrolled construction activity. Implementation of mitigation and avoidance measures MM AI-3.1 would reduce dust emission impacts to a less than significant level by holding the developer responsible for implementing controls (e.g., using water to control dust, covering trucks hauling material, and sweeping streets) to reduce dust generation during demolition and construction on the site.

Diesel emissions during construction is usually the result of improperly tuned and the overuse of diesel equipment. Implementation of mitigation and avoidance measures MM AI-3.1 would reduce diesel emission during construction by holding the developer responsible using properly tuned equipment and reducing the use of diesel equipment to the greatest extent practicable during construction on the site.

Impact CU-1: Archaeological resources could be encountered and damaged during construction of the proposed project.

MM CU-1.1: The developer shall implement the following measures, which would reduce impacts to archaeological resources to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- Prior to issuance of a grading permit, the developer shall retain a qualified archaeologist to complete mechanical subsurface presence/absence testing for the project site after the building, pavement, and landscaping have been cleared from the project site or the developer shall retain a qualified archaeologist to monitor all excavation activities on the project site that are associated with the proposed project. Testing shall consist of backhoe trenching for prehistoric deposits, combined with selected stripping of soils to search for the smaller, more discrete archaeological resources.

- In the event that any archaeological deposits are discovered during presence/absence testing or during monitoring of the excavation activities on the project site, activity in the vicinity of the "find" shall cease and a program for evaluation of the deposits through hand excavation of the suspected resource shall be submitted to the Director of Planning for approval. If evaluation demonstrates that the resource is eligible for inclusion on the California Register of Historic Resources, a plan for mitigation of impacts shall be prepared by a qualified archaeologist and submitted to the Director of Planning for approval.

- In those cases where avoidance is not possible, mitigation can take the form of additional hand excavation to retrieve a representative sample of the archaeological resource for analysis.

- If human remains are encountered, activity in the vicinity of the "find" shall cease, and the "find" shall be handled in accordance with State law and any applicable Native American agreements. All human remains and burial-associated artifacts shall be repatriated in a location that will not be subject to further disturbance. Using professionally-accepted methods, all archaeological resources shall be catalogued and analyzed and a report summarizing such work shall be prepared and provided to the Director of Planning.

Finding: Archaeological resources could be encountered and damaged during construction of the proposed project. Implementation of measures MM CU-1.1 would determine is archaeological resources are present on the project site and, if archaeological resources are present, ensure the project does not significantly impact the resources through the implementation of mitigation or avoidance measures.

Impact BI-1: The proposed project will result in the removal of four ordinance-size palm trees.

MM BI-1.1: Prior to receiving an occupancy permit, the developer shall implement the following measures, which would reduce the impact of the loss of the four ordinance-size palm trees on the project site to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- In conformance with the City of Milpitas Zoning Ordinance, all trees removed from the site that measure 37 inches or greater in circumference (12-inches in diameter) at four feet six inches above the ground surface will be replaced in-kind at a 3:1 ratio within the project site.

- Trees that are removed but cannot be mitigated for on-site, due to lack of available planting area, will be mitigated by fees paid to the City. The funds will be deposited in the City's Tree Replacement Fund and will be used to plant trees within the City of Milpitas.

Finding: The project would not result in substantial direct or indirect impacts to biological resources. With implementation of the mitigation measure MM BI-1.1, the proposed project would conform to the City of Milpitas Zoning Ordinance as it pertains to the removal of trees measuring 37 inches or greater in circumference.

Impact SO-1: Soil conditions known to exist in the vicinity of the project site could result in the development proposed by the project to become structurally unsound and/or expose future occupants to harm.

Impact SO-2: If not designed properly to account for the hydrostatic pressure, the proposed development could become structurally unsound and/or expose future occupants to harm.

MM SO-1.1 & 2.1: The developer shall implement the following measures, which would reduce geology and soils impacts to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- A design-level geotechnical investigation shall be completed by a qualified geologist once site development plans are complete. The design-level geotechnical investigation shall address the following issues:
  - compressible soils,
  - liquefaction,
  - expansive soils,
  - loose surficial soils,
  - shallow groundwater, and
  - sulfates in soil.
- The design-level geotechnical investigation shall be reviewed and approved by the City Geologist, prior to approval of a Grading Permit for the project. All recommendations in the design-level geotechnical investigation shall be incorporated into the project design.
- Final construction plans and specifications shall be reviewed by a qualified geologist to verify they are consistent with the recommendations in the design-level geotechnical investigation.
- A qualified geologist will observe earthwork and foundation installation to verify they are completed according to the recommendations in the design-level geotechnical investigation.

Findings: The proposed project will include standard engineering techniques in conformance with the Uniform Building Code requirements for Seismic Zone 4 with the mitigation measures described above. This will reduce the potential for geology and soils hazards on the site to affect the proposed project to a less than significant level.

Impact HY-1: Construction activities will increase the potential for wind and water erosion, which could cause the degradation of water quality within Coyote Creek and San Francisco Bay.

MM HY-1.1: The following measures, based on Regional Water Quality Control Board Best Management Practices, shall be implemented by the developer to reduce construction-related water quality impacts. The project shall also be compliant with all applicable requirements of the City's NPDES permit in place when the project application is deemed complete. All mitigation shall be implemented prior to the start of earthmoving activities on-site and will continue until construction is complete. These measures shall be printed on all construction documents, contracts, and project plans:

- Burlap bags filled with drain rock will be installed around storm drains to route sediment and debris away from the drains.
- Earthmoving or other dust-producing activities would be suspended during periods of high winds.

- All exposed or disturbed soil surfaces would be watered at least twice daily to control dust as necessary.

- Stockpiles of soil or other materials that can be blown by the wind will be watered or covered.

- All trucks hauling soil, sand, and other loose materials would be covered and all trucks would be required to maintain at least two feet of freeboard.

- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites would be swept daily (with water sweepers). In addition, a tire wash system may be required.

- Vegetation in disturbed areas would be replanted as quickly as possible.

- All unpaved entrances to the site would be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.

- A Storm Water Permit will be administered by the Regional Water Quality Control Board. Prior to construction grading for the proposed land uses, the project proponent will file a "Notice of Intent" (NOI) to comply with the General Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) that includes measures to be implemented by the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB mitigation.

- The project proponent will submit a copy of the draft SWPPP to the City of Milpitas for review and approval prior to start of construction on the project site. The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions.

- When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the Regional Water Quality Control Board and the City of Milpitas. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction storm water management plan is in place as described in the SWPPP for the site.

MM HY-1.2: The following measures, based on Regional Water Quality Control Board Best Management Practices, shall be implemented by the developer to reduce post-construction water quality impacts. The project shall also be compliant with all applicable requirements of the City's NPDES permit in place when the project application is deemed complete. These measures shall be printed on all construction documents, contracts, and project plans:

- As part of the mitigation for post-construction runoff impacts addressed in the SWPPP, the project will implement regular maintenance activities (i.e., sweeping, maintaining vegetative swales, litter control, and other activities as specified by the City) at the site to prevent soil, grease, and litter from accumulating on the project site and contaminating surface runoff. Storm water catch basins will be stenciled to discourage illegal dumping.

- In compliance with Section XI-16-6 of the Milpitas Municipal Code, the project shall include Permanent Stormwater Pollution Prevention Measures in order to reduce water quality impacts

of urban runoff from the entire project site for the life of the project. These measures will include:

- Landscape designs for stormwater treatments that meet the requirements of Provision C.3. of the City's NPDES permit will be submitted with the Site Development Plans and must be approved by the Planning Department prior to issuance of building permits.

- The proposed project will be required to sign an Operation & Management (O&M) agreement with the City to insure continued maintenance and performance of post-construction measures.

Impact HY-2: Dewatering during project construction and, if needed, after construction, could pollute surface water with sediment or hazardous materials.

MM HY-2.1: The following measures shall be implemented by the developer to reduce water quality impacts that could result during dewatering to a less than significant level. The project shall also be compliant with all applicable requirements of the City's NPDES permit in place when the project application is deemed complete. All mitigation shall be implemented prior to the start of earthmoving activities on-site and will continue until dewatering is complete (i.e., during project construction and, if necessary, during the life of the project). These measures shall be printed on all construction documents, contracts, and project plans:

- Groundwater below the project site shall be sampled and tested for contaminants.

  - If groundwater contaminant levels are below RWQCB discharge thresholds, the project shall obtain a permit from the City of Milpitas to discharge the groundwater into the City's stormdrain system. This permit will specify the sediment removal measures to be implemented during dewatering (e.g., settling tank, particulate filters, etc.) and the frequency of ongoing water quality testing.

  - If groundwater contaminant levels are above RWQCB discharge thresholds, the project shall obtain an NPDES permit from the RWQCB prior to discharging the water into the stormdrain system. This permit will specify the groundwater treatment measures and the water quality treatment standards that shall be achieved prior to discharge into the stormdrain system, the sediment removal measures to be implemented during dewatering (e.g., settling tank, particulate filters, etc.), and the frequency of ongoing water quality testing.

Impact HA-1: If onsite soils are contaminated with agricultural chemicals, construction personnel working on the proposed project would be exposed to these chemicals.

Impact HA-2: If onsite soils are contaminated with agricultural chemicals, improper disposal of soil could contaminate the environment.

MM HA-1.1 & 2.1: Prior to the issuance of a Grading Permit, the developer shall implement the following measures, which would reduce potential impacts related to pesticide contaminated soil to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- Soil on the site will be sampled and tested for organochloride pesticides and associated heavy metals.

- If the results of the soil sampling/testing indicate that the soil on the project site is contaminated with agricultural pesticides and/or heavy metals above regulatory agency thresholds, a Soil Management Plan (SMP) will be prepared for the proposed project. The SMP would detail the handling/ disposal of the contaminated soil in a manner that ensures workers, adjacent uses, and the environment are protected. The main objective of the SMP is to establish protocols for the contractor in handling on-site soil during redevelopment of the site (e.g., preparation of a Health and Safety Plan).

- If the results of the soil sampling/testing indicate that the soil on the project site is contaminated with agricultural pesticides and/or heavy metals above regulatory agency thresholds, all soil off-hauled from the project site will be disposed at an appropriate facility that is designed and operated to accept and dispose of hazardous materials safely.

Findings: The project will not deplete the groundwater supply, substantially alter the existing drainage pattern, substantially degrade water quality, subject residents to flood hazards, or increase storm water runoff beyond the capacity of the existing stormwater drainage system. Water quality impacts during and after project construction are usually of soil and contaminants entering the stormwater system. Implementation of measures MM HY-1.1 and MM HY-3.1, and compliance with all applicable requirements of the City's NPDES permit in place when the project application is deemed complete will reduce construction and post-construction water quality impacts to a less than significant level. Implementation of measures HY-2.1 and HY-3.2 will reduce water quality impacts that could occur during dewatering to a less than significant level.

Impact UT-1: The proposed project would substantially increase water demand compared to the existing use.

MM UT-1.1: Prior to issuance of an occupancy permit, the developer shall implement the following measures, which would reduce impacts to the water system to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- The developer shall design and install all water lines necessary to serve the development (including fire flow), sized in accordance with the City's Water Master Plan and Guidelines.

- The developer shall purchase adequate public system water capacities for the project, including costs for capacity and storage needs above the master plan capacities, as determined by the City.

- Prior to receiving recycled water, the site shall be permitted by South Bay Water Recycling (SBWR). In general, a permit will be granted after the following steps have been completed:

  - Plan Submittal and Approval

  - Inspection

  - Retailer Service Meter

- Customer Training

Findings: With the implementation of the mitigation measures described above, the proposed project would not result in significant utility and service system impacts

Impact UT-2: The project will reduce the available limited capacity at the WPCP.

MM UT-2.1: Prior to issuance of an occupancy permit, the developer shall implement the following measures, which would reduce impacts to the water system to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- The developer shall purchase adequate public system sewage capacities for the respective development. Fees shall consist of connection fees, treatment plant fees up to the build-out master plan levels, plus additional fees for costs of sewage collection and regional plant capacity needs above the build-out master plan capacities, and proportional replacement costs for a new Main sewage pump station above the existing 2001 Master Plan capacities, as determined by the City.

Findings: With the implementation of the mitigation measures described above, the proposed project would not result in significant utility and service system impacts

Significant and Unavoidable Impacts

Traffic - Intersection Impacts

Impact TR-3: *Alder Drive/Tasman Drive* – Traffic from the proposed project exacerbates LOS F operations during the PM peak hour.

MM TR-3.1: *Alder Drive/Tasman Drive* - Prior to issuance of a building permit, the developer shall provide all funding necessary for the design and implementation of traffic operation improvements to help in signal coordination with adjacent intersections (i.e. Tasman Drive/I-880 SB Ramps and Great Mall Parkway/I-880 NB Ramps).

Findings: There are no feasible mitigation measures available to reduce the project impact at the intersection of Alder Drive/Tasman Drive to a less than significant level. Conversion of one southbound (Alder Drive) through lane to a left turn lane to provide a total of three southbound left turn lanes improves intersection operations; however, this improvement would impact pedestrian and bicycle activity (which would increase substantially with this and other recently approved residential projects), and degrade vehicle progression and VTA light rail transit operations along Tasman Drive. Thus, the project impact at this intersection is significant and unavoidable.

Impact TR-4: *Tasman Drive/I-880 SB Ramps* – Traffic from the proposed project exacerbates LOS E operations during the PM peak hour.

MM TR-4.1: Prior to issuance of a building permit, the developer shall provide all funding necessary for the design and implementation of traffic operation improvements to help in signal coordination

with adjacent intersections (i.e., Tasman Drive/Alder Drive and Great Mall Parkway/I-880 NB Ramps). This mitigation will improve operations at this intersection, but will not reduce the impact to a less than significant level.

Findings: There is no feasible mitigation available to reduce this impact to a less than significant level. Signal coordination between the adjacent intersections will improve operations at the intersection, but will not reduce the impact to a less than significant level.

Impact TR-5: *Great Mall Parkway/I-880 NB Ramps* – Traffic from the proposed project exacerbates LOS F operations during the AM peak hour.

MM TR-5.1: Prior to issuance of an occupancy permit, the developer shall provide all funding necessary for the design and implementation of the signal coordination with adjacent intersections (i.e., Tasman Drive/I-880 SB Ramps and Tasman Drive/Alder Drive).

Findings: There is no feasible mitigation available to reduce this impact to a less than significant level. Signal coordination between the adjacent intersections will improve operations at the intersection, but will not reduce the impact to a less than significant level.

Impact TR-9: *Great Mall Parkway-Capitol Ave/Montague Expressway* – Traffic from the proposed project will degrade the intersection operations from LOS E- to LOS F during the AM peak hour and exacerbate LOS F conditions during the PM peak hour.

MM TR-9.1: *Great Mall Parkway-Capitol Ave/Montague Expressway* - Prior to issuance of a building permit, the developer shall pay traffic impact fees, which includes the Montague Expressway Fee.

Findings: There are no feasible mitigation measures to reduce the project impact at this intersection to a less than significant level.

Impact TR-11: *Eastbound SR 237, McCarthy Boulevard to I-880* – Traffic from the proposed project causes the freeway segment to degrade from LOS E to LOS F during the PM peak hour.

Impact TR-12: *Westbound SR 237, I-880 to McCarthy Boulevard* – Traffic from the proposed project exacerbates LOS F operations during the AM peak hour.

Impact TR-13: *Westbound SR 237, McCarthy Boulevard to Zanker Road* – Traffic from the proposed project exacerbates LOS F operations during the PM peak hour.

MM TR-11, TR-12, TR-13: The proposed project would impact three segments of SR 237. The City of Milpitas is currently preparing a Citywide Deficiency Plan (CDP) to identify local and regional transportation improvements. The CDP will include the "Immediate Actions" list in Appendix D of the Transportation Impact Analysis Guidelines. Pending final approval of the CDP, the City of Milpitas will require the project applicant to implement, the "Immediate Actions" list in Appendix D of the Transportation Impact Analysis Guidelines (May 1998), as part of the project's approval. These actions include measures to encourage alternative modes of transportation and site design guidelines for new development. Measures from the "Immediate Actions" list (refer to Appendix A of this EIR for the full list) that are appropriate for this project include:

- Improve Pedestrian Facilities (A-4)
- Shuttle (B-3)
- Bus Stop Improvements (B-8)
- Traffic signal timing and synchronization program (F-3)
- HOV parking preference program (G-1)
- Bike facilities (G-2)
- Pedestrian circulation system (G-4)

Findings: While implementation of these measures would incrementally reduce traffic, they would not reduce the project's freeway impacts to a less than significant level. For this reason, the project's freeway impacts are significant and unavoidable.

Impact AI-1: The proposed project would expose sensitive receptors to objectionable odor from the San José/Santa Clara Water Pollution Control Plant (WPCP) and other odor sources in the area, including the Newby Island Landfill, Zanker Road Landfill, Newby Island Compost Facility, and salt evaporation ponds.

Findings: There are no feasible measures to reduce this impact to a less than significant level. BAAQMD advises that the most effective method of avoiding odor impacts is distance (i.e., separation between the odor source and sensitive receptors. The entire project site is exposed to WPCP odor, therefore, it is not possible for the project to provide the separation distance needed to avoid the odor. As discussed in Section 4.3.4.3 Long-Term Noise Impacts, forced-air mechanical ventilation is necessary to avoid significant noise impacts. The provision of forced-air mechanical ventilation would also allow residents of the project to keep windows closed when WPCP odors are noticeable. This would not, however, reduce the odor impact to a less than significant level.

SECTION 2: FINDINGS CONCERNING ALTERNATIVES

CEQA requires that an EIR identify alternatives to a project as proposed. CEQA Guidelines §15126.6(a) specifies that the EIR identify alternatives which "would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen many of the significant environmental effects of the project." Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors. In addition, consistent with CEQA § 21002, a project should not be approved if feasible alternatives would substantially lessen the Project's significant effects. CEQA requires that an EIR identify alternatives to the project as proposed. The CEQA Guidelines [Section 15126.6(a)] specify that an EIR identify alternatives which "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." **Section 6 Alternatives** of this EIR analyzes several alternatives to the proposed project. A brief summary of these alternatives and their impacts is provided below.

No Project Alternative

Under the No Project alternative, the project site would remain developed with a commercial building, which would have no new impacts. The No Project alternative would avoid all the environmental impacts of the proposed project. The No Project alternative would not meet any of the project objectives, but it would avoid all of the impacts of the proposed project. For this reason, the No Project Alternative is an environmentally superior alternative to the proposed project.

Reduced Density Alternative

The Reduced Density alternative limits the density of the project (i.e., number of residential units and/or square footage of retail and/or office uses developed on the project site) to an amount that would not trigger the significant unavoidable traffic impacts that result from development of the proposed project.

In order to mitigate all of the project's significant unavoidable traffic impacts, the total project needs to be reduced to approximately 50 dwelling units, with no retail or office development.

In order to mitigate all of the project's significant unavoidable traffic impacts, except for the project's impact at the intersection of Great Mall Parkway-Capitol Ave/Montague Expressway, the total project needs to be reduced to approximately 225 dwelling units, with no retail or office development.

Both of the Reduced Density alternative scenarios described above would have the same significant unavoidable air quality impact as the proposed project (i.e., expose sensitive receptors to objectionable odor from the San José/Santa Clara Water Pollution Control Plant (WPCP) and other odor sources in the area).

Similar to the proposed project, any substantial development on the site, including the Reduced Density alternative, would also result significant, noise and vibration, air quality, cultural resources, biological resources, hazardous materials, and hydrology and water quality impacts. These impacts are reduced to a less than significant level with the mitigation and avoidance measures that are included in the proposed project. The vibration impacts of the project would be avoided with the smaller building size of the Reduced Density alternative, which would not require pile driving.

The Reduced Density alternative would meet all of the project objectives, except for the applicant's and City's objective to provide a mixed-use development of high-density residential, office, and retail uses. Therefore, the Reduced Density alternative is not a feasible alternative that meets all of the project objectives.

The Reduced Density alternative would avoid the significant unavoidable traffic impacts resulting from the proposed project. For this reason, the Reduced Density alternative is the environmentally superior alternative to the proposed project.

STATEMENT OF OVERRIDING CONSIDERATIONS

General

Pursuant to CEQA Guidelines § 15093, the City Council of the City of Milpitas makes this Statement of Overriding Considerations for those impacts identified in the Project as significant and unavoidable.

The City Council has carefully considered each impact in reaching its decision to approve the "Project" whose primary focus is high-density residential and commercial redevelopment located near a major freeway. Although the City Council believes that many of the unavoidable environmental effects identified in the EIR will be substantially lessened by mitigation measures and regulations incorporated into the Project, the Council recognizes that implementation of the Project carries with it unavoidable adverse environmental effects.

The City Council specifically finds that to the extent that the identified adverse or potentially adverse impacts of the Project have not been mitigated to acceptable levels, there are specific economic, legal, social, technological, environmental, land use, and other considerations that support approval of the Project.

Unavoidable Significant Adverse Impacts

The following unavoidable significant environmental impacts are associated with the proposed Project as identified in the EIR. The impacts cannot be mitigated to less than significant by changes or alterations to the Project.

Traffic Impact: Unacceptable Intersection Operations. Development of the Project as proposed could result in unacceptable operations at multiple intersections in and around the project site. These intersections are listed below:

Impact TR-3: *Alder Drive/Tasman Drive* – Traffic from the proposed project exacerbates LOS F operations during the PM peak hour.

Impact TR-9: *Great Mall Parkway-Capitol Ave/Montague Expressway* – Traffic from the proposed project will degrade the intersection operations from LOS E- to LOS F during the AM peak hour and exacerbate LOS F conditions during the PM peak hour.

There are no feasible mitigation measures available to reduce the project impact at local intersections. While a number of mitigation measures improve the impacts, there are no feasible mitigation measures to reduce the project impact at these intersections to a less than significant level.

Traffic Impact: Unacceptable Freeway Operations. Added traffic from implementation of the proposed Project will exacerbate already unacceptable traffic operations on the following freeway segments:

Impact TR-4: *Tasman Drive/I-880 SB Ramps* – Traffic from the proposed project exacerbates LOS E operations during the PM peak hour.

Impact TR-5: *Great Mall Parkway/I-880 NB Ramps* – Traffic from the proposed project exacerbates LOS F operations during the AM peak hour.

Impact TR-11: *Eastbound SR 237, McCarthy Boulevard to I-880* – Traffic from the proposed project causes the freeway segment to degrade from LOS E to LOS F during the PM peak hour.

Impact TR-12: *Westbound SR 237, I-880 to McCarthy Boulevard* – Traffic from the proposed project exacerbates LOS F operations during the AM peak hour.

Impact TR-13: *Westbound SR 237, McCarthy Boulevard to Zanker Road* – Traffic from the proposed project exacerbates LOS F operations during the PM peak hour.

There are no feasible mitigation measures available to reduce the project impact at these freeway segments. While a number of mitigation measures improve the impacts, there are no feasible mitigation measures to reduce the project impact to a less than significant level.

Air Quality Impact: Population-Based and Cumulative Emissions. New development under the proposed Project would contribute to the exceedance of regional air quality standards and could increase population and vehicle miles traveled in the area at a rate greater than that assumed in the regional air quality planning, therefore conflicting with implementation of the Bay Area Ozone Strategy.

Impact AI-1: The proposed project would expose sensitive receptors to objectionable odor from the San José/Santa Clara Water Pollution Control Plant (WPCP) and other odor sources in the area, including the Newby Island Landfill, Zanker Road Landfill, Newby Island Compost Facility, and salt evaporation ponds.

There are no feasible mitigation measures available to reduce the impacts of objectionable odor from the San José/Santa Clara Water Pollution Control Plant (WPCP) and other odor sources in the area to a less than significant level.

Overriding Considerations

The City Council has balanced the benefits of the Project to the City of Milpitas against the significant and potentially significant adverse impacts identified in the EIR that have not been eliminated or mitigated to a level of insignificance. To the extent that the Project would result in unavoidable significant impacts described in the EIR, the City Council hereby determines that such unavoidable impacts are outweighed by the benefits of the Project as further set forth below. The City Council, acting pursuant to CEQA Guidelines Section 15093, hereby determines that unavoidable impacts of the Project are outweighed by the need to redevelop commercial land with high density commercial and residential uses located near a major freeway. The City

Council has considered the public record of proceedings on the proposed Project and has determined that approval of the Project would result in the redevelopment of commercial land that will increase the city's tax base, result in desirable destination for the residents of Milpitas and reduce traffic generated due to the mix of desirable uses.

Upon consideration of the public record of proceedings on the Project, the City Council hereby determines that substantial evidence is included in the record demonstrating the housing, social, environmental, economic and other benefits that the City will derive from implementation of the Project. The City Council further determines that approval and implementation of the Project will result in the following substantial public benefits.

Provides Higher Intensity Mixed Uses. The Project provides the opportunity to intensify development in an appropriate area near a major freeway, and responds to strong market interest in high-rise development furthering the General Plan goal providing for a variety of housing types and densities that meets the needs of individuals and families (General Plan Goal 2.a-G-3). Residents are encouraged to work, shop and recreate within the project helping to reduce traffic congestion.

Strengthens the City's Tax Base: The Project provides opportunities for new retail and office uses, ownership housing, and high-density employment uses. The result will be increases in property values and property tax revenues, increased sales tax revenue, and increased business activity.

Create Employment Opportunities: The Project provides for a substantial amount of new office and retail space over a three-acre site creating a concentration of employment opportunities.

EXHIBIT 2

MITIGATION MONITORING AND REPORTING PROGRAM

LANDMARK TOWER MIXED-USE DEVELOPMENT

(SCH# 2007062074)

August 2008

PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the Mitigation Monitoring and Reporting Program is to ensure compliance with the mitigation measures during project implementation.

On September 16, 2008, the Environmental Impact Report was adopted for the Landmark Tower Mixed-Use Development project. The Environmental Impact Report concluded that the implementation of the project could result in significant effects on the environment; therefore, mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program outlines these measures and how, when, and by whom they shall be implemented.

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
LAND USE				
The proposed project conflicts with the regulations adopted for the purpose of avoiding or mitigating an environmental effect.	Construct a helicopter pad meeting the requirements of the Milpitas Fire Department.	Prior to issuance of an occupancy permit, the developer shall ensure this measure mitigation is implemented	This measure shall be printed on all construction documents, contracts, and project plans.	Milpitas Fire Department
TRANSPORTATION				
McCarthy Boulevard/ Bellew Drive – Intersection operations degrade from LOS D- to LOS E during the PM peak.	Modify the existing eastbound approach (i.e., one left turn, one through, and one right turn lane) to provide two left turn lanes and one shared through/right turn lane, which would provide acceptable (LOS D) operations.	Prior to issuance of a building permit, the development shall ensure this measure is implemented.	This measure shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services
Alder Drive/Tasman Drive – Traffic from the proposed project exacerbates LOS F operations during the PM peak hour.	Provide $10,000 in funding, as of January 2016, to be adjusted per ENR construction costs, at the time of payment, for the design and implementation of traffic operation improvements to help in signal coordination with adjacent intersections (i.e. Tasman Drive/I-880 SB Ramps and Great Mall Parkway/I-880 NB Ramps).	Prior to issuance of a building permit, the developer shall ensure this measure is implemented.	The measure shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services
Tasman Drive/I-880 SB Ramps – Traffic from the proposed project exacerbates	Provide $10,000 in funding, as of January 2016, to be adjusted per ENR construction costs, at the time of payment for the design and implementation of traffic operation improvements to help in signal	Prior to issuance of a building permit, the developer shall	The measure shall be printed on all construction documents,	Director of Planning and Neighborhood Services

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
LOS E operations during the PM peak hour.	coordination with adjacent intersections (i.e., Tasman Drive/Alder Drive and Great Mall Parkway/I-880 NB Ramps).	ensure this measure is implemented.	contracts, and project plans.	
Great Mall Parkway/I-880 NB Ramps – Traffic from the proposed project exacerbates LOS F operations during the AM peak hour.	Provide $10,000 in funding, as of January 2016, to be adjusted per ENR construction costs, at the time of payment for the design and implementation of the signal coordination with adjacent intersections (i.e., Tasman Drive/I-880 SB Ramps and Tasman Drive/Alder Drive).	Prior to issuance of a building permit, the developer shall ensure this measure is implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services
Bellew Drive/Barber Lane – The addition of project traffic causes this intersection to degrade from LOS B- to LOS E during the PM peak hour.	Add a northbound left turn lane.	Prior to issuance of a building permit, the developer shall ensure this measure is implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services
McCarthy Boulevard-O'Toole Avenue/Montague Expressway – Traffic from the proposed project exacerbates LOS F operations during the PM peak hour.	There are three options that would mitigate the project's impact at the intersection of McCarthy Boulevard-O'Toole Avenue /Montague Expressway to a less than significant level. **Option 1** Widen the northbound approach approximately three feet to provide a dedicated right turn lane from northbound O'Toole Avenue to eastbound Montague Expressway. With this improvement, the intersection would operate at LOS D during the AM peak hour and LOS E during the PM peak hour. The dedicated right turn lane would	Prior to issuance of a building permit, the developer shall ensure this measure is implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
	extend from Rincon Avenue to Montague Expressway, approximately 250 feet. Preliminary engineering drawings indicate that this mitigation can be implemented within the existing right-of-way. This would be accomplished by shifting the existing lanes on the south leg of this intersection approximately three feet to the west. The south half of the intersection is within the jurisdiction of the City of San Jose and, therefore, the above-described mitigation is outside the control of the City of Milpitas to implement. **Option 2** If subsequent evaluation of the mitigation proposed in Option 1 determines that the proposed lane shift is not feasible, then right-of-way acquisition along the east side of the north approach would be necessary. The south half of the intersection is within the jurisdiction of the City of San Jose and, therefore, the above-described mitigation is outside the control of the City of Milpitas to implement. Mitigation that reduces sidewalk widths below the City standard is not allowed under City of San Jose Transportation Impact Policy 5-3. The standard sidewalk width in North San Jose is five feet. The existing sidewalk is five and one-half feet wide. Therefore, in order to implement this mitigation consistent with adopted policy, approximately two and one-half feet of right-of-way behind the sidewalk would need to be acquired from the adjacent private property for the length of the dedicated right turn lane. This equates to the acquisition of approximately 513 square feet of right-of-way (i.e., 2.5 square feet x 250 feet = 625 square feet). The mitigation would also require relocating existing utilities (e.g., a light pole). The			

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
	landscape reduction and utility relocation would not result in a significant impact. **Option 3** A square-loop interchange is planned to be constructed at the intersection of McCarthy Boulevard-O'Toole Avenue /Montague Expressway under Phase 3 of the North San Jose Area Development Policy (NSJADP). With this planned roadway improvement, the intersection will operate at LOS and project's impact at this intersection will be less than significant. The City of San Jose has stated that payment of an in-lieu fee towards the planned square-loop interchange is acceptable and is the preferred mitigation for the project impact at this intersection. The dollar amount of the in-lieu fee would be equal to the cost to implement the lane shift (Option 1) or the appraised value of the right-of-way needed to construct the dedicated right turn lane (625 square feet, described in Option 2, above). The NSJADP is the adopted program that would allow for a fair-share contribution to this mitigation. The NSJADP does not establish a timeline for the development phases. The amount of development and its timing will be determined by the economy, markets, and the decisions made by private sector property owners and developers. Therefore, if the City of Milpitas accepts the City of San Jose's timeline for implementation of the mitigation (i.e., unknown), then payment of the in-lieu fee would mitigate the project's traffic impact at the intersection.			
E. Calaveras Boulevard/S. Milpitas Boulevard – Traffic	Add a third westbound through lane, which requires converting the separate right-turn lane to a shared through/right-turn lane and striping a third receiving lane past the intersection.	Prior to issuance of a building permit, the developer shall	All measures shall be printed on all construction	Director of Planning and

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
from the proposed project exacerbates LOS F operations during the AM peak hour.		ensure this measure is implemented.	documents, contracts, and project plans.	Neighborhood Services
Great Mall Parkway-Capitol Ave/Montague Expressway – Traffic from the proposed project will degrade the intersection operations from LOS E- to LOS F during the AM peak hour and exacerbate LOS F conditions during the PM peak hour.	Pay traffic impact fees, including the Montague Expressway Fee.	Prior to issuance of a building permit, the developer shall ensure this measure is implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services
Eastbound SR 237, McCarthy Boulevard to I-880 – Traffic from the proposed project causes the freeway segment to degrade from LOS E to LOS F during the PM peak hour.	The City of Milpitas is currently preparing a Citywide Deficiency Plan (CDP) to identify local and regional transportation improvements. The CDP will include the "Immediate Actions" list in Appendix D of the Transportation Impact Analysis Guidelines. Pending final approval of the CDP, the City of Milpitas will require the project applicant to implement, the "Immediate Actions" list in Appendix D of the Transportation Impact Analysis Guidelines (May 1998), as part of the project's approval. These actions include measures to encourage alternative modes of transportation and site design guidelines for new development. Measures from the	Prior to issuance of a building permit, the developer shall ensure this measure is implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
Westbound SR 237, I-880 to McCarthy Boulevard – Traffic from the proposed project exacerbates LOS F operations during the AM peak hour. *Westbound SR 237, McCarthy Boulevard to Zanker Road* – Traffic from the proposed project exacerbates LOS F operations during the PM peak hour.	"Immediate Actions" list (refer to Appendix A of this EIR for the full list) that are appropriate for this project include: • Improve Pedestrian Facilities (A-4) • Shuttle (B-3) • Bus Stop Improvements (B-8) • Traffic signal timing and synchronization program (F-3) • HOV parking preference program (G-1) • Bike facilities (G-2) • Pedestrian circulation system (G-4)			
NOISE				
During project construction, businesses in the vicinity of the site would be intermittently exposed to high noise levels.	Implement the following measures: • Construction equipment shall be well maintained and used judiciously to be as quiet as practical. • Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists. • Prohibit all unnecessary idling of internal combustion engines and equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.	During construction, the developer shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
	• Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from businesses or noise-sensitive land uses. • Notify all adjacent land uses of the construction schedule in writing. • Designate a disturbance coordinator, responsible for responding to complaints about construction noise. The name and telephone number of the disturbance coordinator shall be posted at the construction site and made available to businesses, residences or noise-sensitive land uses adjacent to the construction site. • If pile driving is necessary, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile. • If pile driving is necessary, when possible the project shall work with the owners and managers of adjacent commercial uses to select days and times to conduct pile-driving activities that would minimize the impact on these uses.			
Commercial uses north and south of the project site would be exposed to vibration during construction of the project foundation, particularly if pile driving is used as a construction method.	Implement the following measures, which in addition to those measures listed above for short-term construction noise impacts, would reduce short-term construction vibration impacts to a less than significant level: • Avoid impact pile driving where possible. Drilled piles or construction of slab mat foundation cause lower vibration levels where geological conditions permit their use. • Identify any highly vibration sensitive uses located on the adjoining properties to the north and south of the site. • If impact pile driving is proposed within 50 feet of adjacent structures or within 200 feet of any highly sensitive uses identified in the adjoining buildings, a construction vibration-	During construction, the developer shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
	monitoring plan would need to be implemented to document conditions prior to, during and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and in accordance with industry accepted standard methods. The construction vibration monitoring plan would include the following tasks: ▪ Schedule pile driving so that piles furthest from adjacent structures are driven first, and only after vibration levels are found to be within the limits is pile driving be allowed at closer distances. ▪ Performance of a photo survey, elevation survey, and crack monitoring survey for each impacted structure. Surveys shall be performed prior to any construction activity, in regular interval during construction and after project completion and shall include internal and external crack monitoring in structures, settlement, distress, and shall document the condition of foundations, walls and other structural elements in the interior and exterior of the structures. ▪ Development of a vibration monitoring and construction contingency plan to identify structures where monitoring would be completed, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to complete photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies would be identified for when vibration levels approached the limits. ▪ At a minimum, vibration monitoring shall be completed during pavement demolition, excavation, and pile driving			

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	activities. Monitoring results may indicate the need for more or less intensive measurements. ▪ If vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures. ▪ Designate a person responsible for registering and investigating claims of excessive vibration. The contact information for this person shall be clearly posted on the construction site. ▪ Complete a post-construction survey on structures where either monitoring has indicated high levels or complaints of damage have been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. ▪ The results of all vibration monitoring shall be summarized and submitted in a report shortly after substantial completion of each phase identified in the project schedule. The report shall include a description of measurement methods, equipment used, calibration certificates and any required graphics to clearly identify vibration-monitoring locations. An explanation of all events that exceeded vibration limits will be included together with proper supporting documentation.			
Without the provision of forced-air mechanical ventilation systems and/or implementation of	Implement the following measures: • Building design and treatments will be incorporated in to the project to ensure compliance with State and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that interior noise levels will be reduced to 45 dBA DNL or	Prior to issuance of a building permit, the developer shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
sound-rated construction methods, the interior noise levels of the proposed residential units would be above the City and State standard of 45 dBA DNL.	lower. Building sound insulation requirements would include the provision of forced-air mechanical ventilation for all outer facing residential units, courtyard facing units on the 10th floor and higher, and the clubhouse proposed atop the parking garage, so that windows could be kept closed at the occupant's discretion to control noise. Special building construction techniques may be required for outer northwest, northeast, and southeast facing facades, courtyard units on the 13th floor and above, and the clubhouse atop the parking garage. These treatments could include sound rated windows and doors, sound rated wall constructions, acoustical caulking, etc. The analysis be submitted to the City of Milpitas for review and approval along with the building plans, prior to issuance of a building permit. Feasible construction techniques such as these would adequately reduce interior noise levels to 45 dBA DNL or lower. • A qualified acoustical consultant shall review final site plans, building elevations, and floor plans prior to the issuance of a building permit to calculate expected interior and exterior noise levels and ensure compliance with City policies and State noise regulations.			
AIR QUALITY				
Construction activities on the project site could result in PM10 levels downwind of the project site that	Implement the following measures during demolition: • Watering will be used to control dust generation during demolition of structures and break-up of pavement. • All trucks hauling demolition debris from the site will be covered. • Dust-proof chutes to load debris into trucks will be used whenever feasible.	During demolition/ construction, the developer shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
exceed State standards.	Implement the following measures during construction: • Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non toxic stabilizers or dust palliatives. • Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard. • Pave, apply water three times daily, or apply (non toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites. • Sweep daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff related impacts to water quality. • Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets. • Hydroseed or apply non toxic soil stabilizers to inactive construction areas. • Enclose, cover, water twice daily, or apply non toxic soil binders to exposed stockpiles (dirt, sand, etc.). • Limit speeds on unpaved roads to 15 mph. • Install sandbags or other erosion control measures to prevent silt runoff to public roadways. • Replant vegetation in disturbed areas as quickly as possible. • Suspend construction activities that cause visible dust plumes to extend beyond the project site.			

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
	• Install wheel washers for all existing trucks, or wash off the tires or tracks of all trucks and equipment leaving the site; • Install wind breaks, or plant trees/ vegetative wind breaks at windward side(s) of construction areas. • Suspend excavation and grading activities when wind gusts exceed 25 mph; and • Limit the area subject to excavation grading, and other construction activity at any one time			
Sensitive receptors could be exposed to elevated levels of diesel particulate during project construction.	Implement the following measures: • Prohibit use of "dirty" equipment. Opacity is an indicator of exhaust particulate emissions from off-road diesel powered equipment. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately. • The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g. compressors). • Diesel equipment standing idle for more than two minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite and staged away from residential areas. • Properly tune and maintain equipment for low emissions.	During demolition/ construction, the developer shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services
CULTURAL RESOURCES				

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
Archaeological resources could be encountered and damaged during construction of the proposed project.	Implement the following measures: • Prior to issuance of a grading permit, the developer shall retain a qualified archaeologist to complete mechanical subsurface presence/absence testing for the project site after the building, pavement, and landscaping have been cleared from the project site or the developer shall retain a qualified archaeologist to monitor all excavation activities on the project site that are associated with the proposed project. Testing shall consist of backhoe trenching for prehistoric deposits, combined with selected stripping of soils to search for the smaller, more discrete archaeological resources. • In the event that any archaeological deposits are discovered during presence/absence testing or during monitoring of the excavation activities on the project site, activity in the vicinity of the "find" shall cease and a program for evaluation of the deposits through hand excavation of the suspected resource shall be submitted to the Director of Planning for approval. If evaluation demonstrates that the resource is eligible for inclusion on the California Register of Historic Resources, a plan for mitigation of impacts shall be prepared by a qualified archaeologist and submitted to the Director of Planning for approval. • In those cases where avoidance is not possible, mitigation can take the form of additional hand excavation to retrieve a representative sample of the archaeological resource for analysis. • If human remains are encountered, activity in the vicinity of the "find" shall cease, and the "find" shall be handled in accordance with State law and any applicable Native American agreements. All human remains and burial-associated artifacts shall be	Prior to issuance of a grading permit, the developer shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
	repatriated in a location that will not be subject to further disturbance. Using professionally-accepted methods, all archaeological resources shall be catalogued and analyzed and a report summarizing such work shall be prepared and provided to the Director of Planning.			
BIOLOGICAL RESOURCES				
The proposed project will result in the removal of four ordinance-size palm trees.	Implement the following measures: • In conformance with the City of Milpitas Zoning Ordinance, all trees removed from the site that measure 37 inches or greater in circumference (12-inches in diameter) at four feet six inches above the ground surface will be replaced in-kind at a 3:1 ratio within the project site. • Trees that are removed but cannot be mitigated for on-site, due to lack of available planting area, will be mitigated by fees paid to the City. The funds will be deposited in the City's Tree Replacement Fund and will be used to plant trees within the City of Milpitas.	Prior to receiving an occupancy permit, the developer shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services
GEOLOGY AND SOILS				
Soil conditions known to exist in the vicinity of the project site could result in the development proposed by the project to become structurally unsound	Implement the following measures: • A design-level geotechnical investigation shall be completed by a qualified geologist once site development plans are complete. The design-level geotechnical investigation shall address the following issues: ▪ compressible soils, ▪ liquefaction,	Prior to issuance of a grading permit, the developer shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
and/or expose future occupants to harm. If not designed properly to account for the hydrostatic pressure, the proposed development could become structurally unsound and/or expose future occupants to harm.	▪ expansive soils, ▪ loose surficial soils, ▪ shallow groundwater, and ▪ sulfates in soil. • The design-level geotechnical investigation shall be reviewed and approved by the City Geologist, prior to approval of a Grading Permit for the project. All recommendations in the design-level geotechnical investigation shall be incorporated into the project design. • Final construction plans and specifications shall be reviewed by a qualified geologist to verify they are consistent with the recommendations in the design-level geotechnical investigation. • A qualified geologist will observe earthwork and foundation installation to verify they are completed according to the recommendations in the design-level geotechnical investigation.			
HYDROLOGY, DRAINAGE, AND WATER QUALITY				
Construction activities will increase the potential for wind and water erosion, which could cause the degradation of water quality within Coyote Creek and San Francisco Bay.	Implement the following construction measures, based on Regional Water Quality Control Board Best Management Practices, and be compliant with all applicable requirements of the City's NPDES permit in place when the project application is deemed complete: • Burlap bags filled with drain rock will be installed around storm drains to route sediment and debris away from the drains. • Earthmoving or other dust-producing activities would be suspended during periods of high winds. • All exposed or disturbed soil surfaces would be watered at least twice daily to control dust as necessary.	All measures shall be implemented by the developer prior to the start of earthmoving activities on-site and will continue until construction is complete.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
	• Stockpiles of soil or other materials that can be blown by the wind will be watered or covered. • All trucks hauling soil, sand, and other loose materials would be covered and all trucks would be required to maintain at least two feet of freeboard. • All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites would be swept daily (with water sweepers). In addition, a tire wash system may be required. • Vegetation in disturbed areas would be replanted as quickly as possible. • All unpaved entrances to the site would be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City. • A Storm Water Permit will be administered by the Regional Water Quality Control Board. Prior to construction grading for the proposed land uses, the project proponent will file a "Notice of Intent" (NOI) to comply with the General Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) that includes measures to be implemented by the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB mitigation. • The project proponent will submit a copy of the draft SWPPP to the City of Milpitas for review and approval prior to start of construction on the project site. The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions.			

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
	• When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the Regional Water Quality Control Board and the City of Milpitas. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction storm water management plan is in place as described in the SWPPP for the site. Implement the following post-construction measures, based on Regional Water Quality Control Board Best Management Practices, and be compliant with all applicable requirements of the City's NPDES permit in place when the project application is deemed complete: • As part of the mitigation for post-construction runoff impacts addressed in the SWPPP, the project will implement regular maintenance activities (i.e., sweeping, maintaining vegetative swales, litter control, and other activities as specified by the City) at the site to prevent soil, grease, and litter from accumulating on the project site and contaminating surface runoff. Storm water catch basins will be stenciled to discourage illegal dumping. • In compliance with Section XI-16-6 of the Milpitas Municipal Code, the project shall include Permanent Stormwater Pollution Prevention Measures in order to reduce water quality impacts of urban runoff from the entire project site for the life of the project. These measures will include: ▪ Landscape designs for stormwater treatments that meet the requirements of Provision C.3. of the City's NPDES permit			

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
	will be submitted with the Site Development Plans and must be approved by the Planning Department prior to issuance of building permits. The proposed project will be required to sign an Operation & Management (O&M) agreement with the City to insure continued maintenance and performance of post-construction measures.			
Dewatering during project construction and, if needed, after construction, could pollute surface water with sediment or hazardous materials.	Implement the following measures and also be compliant with all applicable requirements of the City's NPDES permit in place when the project application is deemed complete: • Groundwater below the project site shall be sampled and tested for contaminants. ▪ If groundwater contaminant levels are below RWQCB discharge thresholds, the project shall obtain a permit from the City of Milpitas to discharge the groundwater into the City's stormdrain system. This permit will specify the sediment removal measures to be implemented during dewatering (e.g., settling tank, particulate filters, etc.) and the frequency of ongoing water quality testing. ▪ If groundwater contaminant levels are above RWQCB discharge thresholds, the project shall obtain an NPDES permit from the RWQCB prior to discharging the water into the stormdrain system. This permit will specify the groundwater treatment measures and the water quality treatment standards that shall be achieved prior to discharge into the stormdrain system, the sediment removal measures to be implemented during dewatering (e.g., settling tank,	All mitigation shall be implemented prior to the start of earthmoving activities on-site and shall continue until dewatering is complete (i.e., during project construction and, if necessary, during the life of the project).	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
	particulate filters, etc.), and the frequency of ongoing water quality testing.			
HAZARDS AND HAZARDOUS MATERIALS				
If onsite soils are contaminated with agricultural chemicals, construction personnel working on the proposed project would be exposed to these chemicals. If onsite soils are contaminated with agricultural chemicals, improper disposal of soil could contaminate the environment.	Implement the following measures: • Soil on the site will be sampled and tested for organochloride pesticides and associated heavy metals. • If the results of the soil sampling/testing indicate that the soil on the project site is contaminated with agricultural pesticides and/or heavy metals above regulatory agency thresholds, a Soil Management Plan (SMP) will be prepared for the proposed project. The SMP would detail the handling/ disposal of the contaminated soil in a manner that ensures workers, adjacent uses, and the environment are protected. The main objective of the SMP is to establish protocols for the contractor in handling on-site soil during redevelopment of the site (e.g., preparation of a Health and Safety Plan). • If the results of the soil sampling/testing indicate that the soil on the project site is contaminated with agricultural pesticides and/or heavy metals above regulatory agency thresholds, all soil off-hauled from the project site will be disposed at an appropriate facility that is designed and operated to accept and dispose of hazardous materials safely.	Prior to the issuance of a Grading Permit, the developer shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services
UTILITIES AND SERVICE SYSTEMS				
The proposed project would substantially increase water	Implement the following measures:	Prior to issuance of an occupancy permit, the	All measures shall be printed on all construction	Director of Planning and

MITIGATION MONITORING AND REPORTING PROGRAM LANDMARK TOWER MIXED-USE DEVELOPMENT				
Impact(s)	**Mitigation and Avoidance Measures**	**Timeframe and Responsibility for Implementation**	**Method of Compliance**	**Oversight of Implementation**
demand compared to the existing use.	• The developer shall design and install all water lines necessary to serve the development (including fire flow), sized in accordance with the City's Water Master Plan and Guidelines. • The developer shall purchase adequate public system water capacities for the project, including costs for capacity and storage needs above the master plan capacities, as determined by the City. • Prior to receiving recycled water, the site shall be permitted by South Bay Water Recycling (SBWR). In general, a permit will be granted after the following steps have been completed: ▪ Plan Submittal and Approval ▪ Inspection ▪ Retailer Service Meter ▪ Customer Training	developer shall ensure these measures are implemented.	documents, contracts, and project plans.	Neighborhood Services
The project will reduce the available limited capacity at the WPCP.	Implement the following measures: • The developer shall purchase adequate public system sewage capacities for the respective development. Fees shall consist of connection fees, treatment plant fees up to the build-out master plan levels, plus additional fees for costs of sewage collection and regional plant capacity needs above the build-out master plan capacities, and proportional replacement costs for a new Main sewage pump station above the existing 2001 Master Plan capacities, as determined by the City.	Prior to issuance of an occupancy permit, the developer shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services

SOURCE: City of Milpitas, *Landmark Tower Mixed-Use Development Draft EIR,* April 2008.